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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,094	01/14/2004	Lisa Carole Taylor-Kennedy	P-B107	3513
29222	7590	12/15/2004		
W. THOMAS TIMMONS THE WHITE HOUSE ON TURTLE CREEK 2401 TURTLE CREEK BLVD DALLAS, TX 75219-4760				
			EXAMINER NGUYEN, CAMTU TRAN	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,094

Applicant(s)

TAYLOR-KENNEDY, LISA
CAROLE

Examiner

Camtu T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to because Figure 3 is very confusing and misleading. In the specification on page 4 lines 4-9 disclosing the angle (24) of the chin support to the main plane (26) and drawing of Figure 3 does not show angle (24) is between the chin support to the main plane (26). Instead, it appears that angle (24), as shown in Figure 3, is between the 1st mandible support to the main plane (26). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Desembrana (U.S. Patent No. 6,277,053). Desembrana discloses 1-4 a chin and face toning strap (12) comprising elements as recited in these claims including a chin portion (22), opposed cheek portion (26), and opposed ends (18) wherein the opposed ends (18) each having a hook and loop patch (20) disposed thereon. The hook and loop patches (20) couple together to secure the strap (12) under the chin (14) and to the head (16). The opposed cheek portion (26) of the strap (12) positionable against the cheeks of the user. With regards to claims 8 and 15, the Desembrana strap as illustrated in Figure 2 appears to be in the width as recited.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

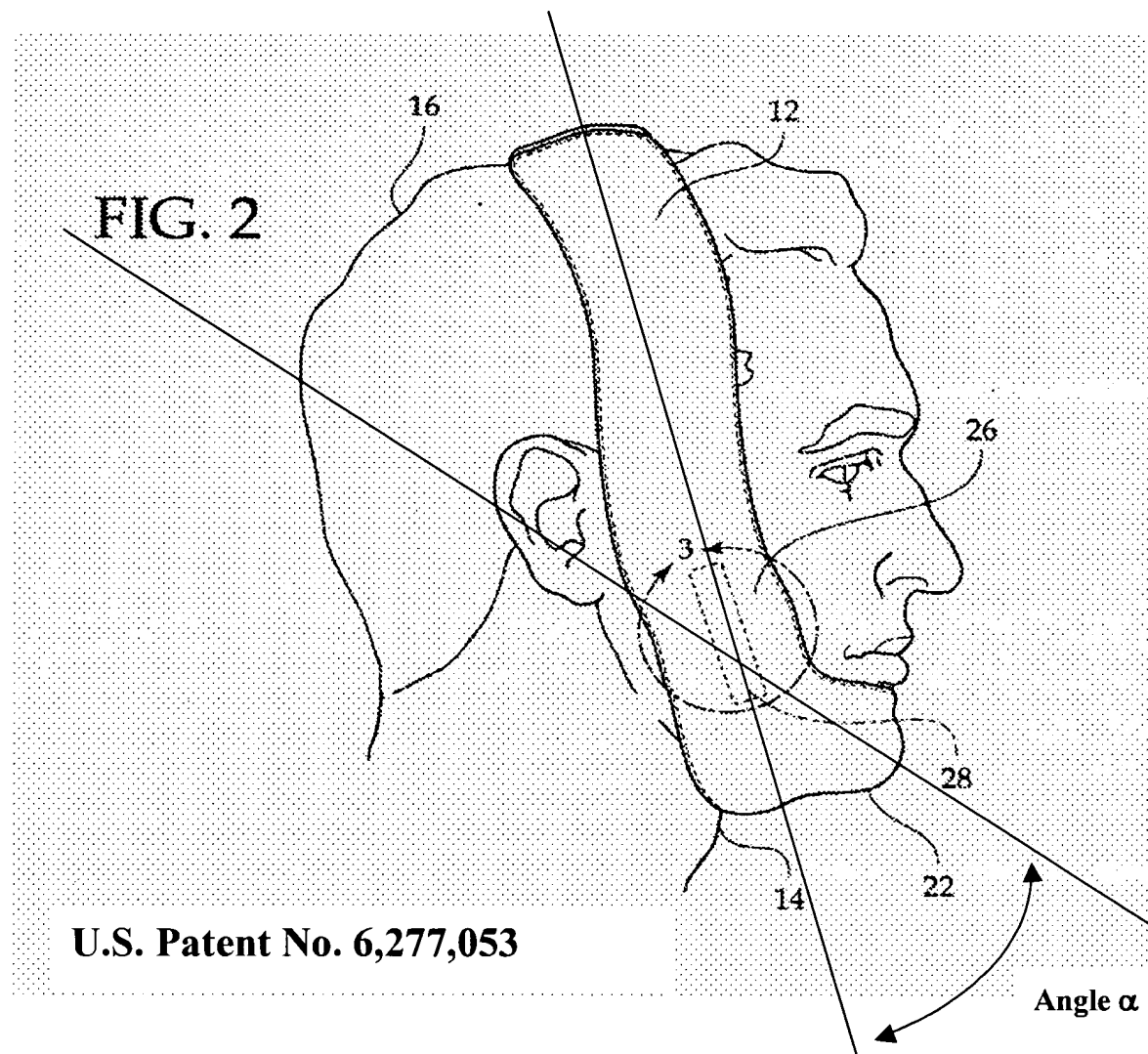
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,893,365). Anderson discloses in Figures 1-6 a headgear comprising elements as recited in these claims including the chin strap (28), the back strap (30), and the

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headband (26) having width of 1-¼ inches (column 4 lines 32-38). With regards to the width as recited in claims 8 and 15, applicant lacks the criticality of the claimed width. Therefore it would have been obvious to one skilled in the art to design and fabricate the strap to have a width within the range as recited to accommodate for fashion and also for the comfort of the user, accordingly.

Claims 2-7, 9-14, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desembrana (U.S. Patent No. 6,277,053). Desembrana discloses 1-4 a chin and face toning strap (12) comprising elements as recited in these claims. Figure 1 illustrates the strap (12) in its opened flat position wherein the opposed ends (18) of the strap (12) appear to be at angle relative to each other. With regards to the angles, as recited, applicant lacks the criticality of angles, as claimed. Therefore, clearly, it would have been obvious on one of ordinary skill in the art to design the strap having the ends to be angled relative to each other at the angle, as recited, as such would provide comfort to the user. With regards to claims 5-7, 12-14, and 19-21, Desembrana discloses in Figure 2 illustrating when the device is closed, the chin portion (22) is at an angle to the main plane of the strap is approximately the angle, as recited. See Examiner's interpretation of the angle (angle α), as illustrated below.



Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Camtu Nguyen
December 11, 2004


Henry Bennett
Supervisory Patent Examiner
Group 3700